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LESSONS OF THE ILLEGAL STRUCTURES CONTROVERSY

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In the Spring and early Summer of 2011 the reading and viewing public of Hong Kong were kept amused, and perhaps bemused, by what might be termed “the illegal structures controversy”. This was a period of regular, almost daily, revelation that the residence of some well-known personage or other had been altered without permission having been first obtained from the Building Authority. The controversy had a strong political flavour. Those caught up in it included high government officers, members of the Legislative Council, leaders of institutions and some very wealthy businessmen.

The political flavour arose not just because those involved included politicians and officials but also because the saga brought together two “hot” issues. The first is one that has long been smoldering, namely the privileges of indigenous villagers from the rural parts of the Special Administrative Region, the area still referred to as the New Territories. The second, and newer, issue is the perceived unfairness or discrimination in the application of the law regarding illegal structures.

The purpose of this lecture, however, is not to discuss the politics of the controversy but to identify and examine the underlying law and procedure involved. In the process I hope to correct certain misunderstandings which have surfaced in the public debate which was triggered by the controversy. The law was not in the forefront of the controversy but it was always in the background and was occasionally referred to. These references revealed a degree of confusion about the law.

The Ombudsman’s Report

What ignited the controversy was a report by the office of the Ombudsman released in April 2011 concerning inconsistency in the enforcement of the law which forbids building work to be carried out without prior government permission.¹ For many years there had been complaints that the law was enforced more vigorously in urban areas than in rural areas. The report found

¹ Direct Investigation, *Enforcement Against Unauthorised Building Works in New Territories Exempted Houses*, Office of the Ombudsman, April 2011.

this to be so and identified reasons for the inconsistency.

This was not the Ombudsman's first investigation of the problem. He had looked at it on two previous occasions, in 1996 and 2004,² yet nothing effective had been done to address the inconsistency. Indeed in 2011 he found that matters had if anything worsened since he last visited the subject.

The controversy

In apparent response to the report a district politician from one of the villages asserted that the extension of their houses was one of the customary rights of the indigenous population. This provoked a sharp reaction from politicians with urban electorates who have long regarded the privileges of indigenous men as unwarranted and out of date and also from the government for which the upholding of the law against unauthorized structures is a necessity. There followed a contest between rival newspapers of "hunt the illegal structure" in which the press competed to reveal unauthorized alterations to the properties of the famous and the rich.

So it was published that one Legislative Council member who had been outspoken on the issue had a glass structure on the roof of his villa. Another, who had asked questions in Legco, was revealed to have a balcony at his flat which had been enclosed. Two other legislators were said to have removed the glass from rooftop structures; later it was revealed that they had restored the glass. The house of one high government officer also contained balconies and a roof structure: she explained that they had been in place when she purchased the house. Ironically it was a village-style house. The balconies at the flat of the Director of Buildings had been adapted: he was quoted as saying that the adaptations were legal: he had certified them to be so himself. A flat owned by the Chief Executive had a similar adaptation: this was removed. A government minister's flat had a door which should not have been there. Another minister had an enclosed balcony; so did the residence of the Commissioner of Police. The large house of the chairman of the rural congress, the Hung Yee Kuk, was shown have many alterations, including some ornate gates. Gates were revealed to be one of the adaptations at the residence of the chairman of the Bar and at a number of opulent villas of business tycoons, some of whom were alleged to have enclosed public roads so as to make them into private driveways and to have maintained recreational facilities on government land.³

The contest died down after a few weeks, perhaps because no one was

² *Investigation Report on Enforcement Action on UBWs at NTEHs*, Office of the Ombudsman, Aug 2004.

³ *South China Morning Post*, 29.7.11, page A3.

particularly surprised that even the great and the good had illegal structures. The publicity merely went to show what everybody already knew: that the law was roundly ignored. Nevertheless, the Press returned to the subject in September 2011 with more revelations.

The Law

The law concerning building construction is contained in the Buildings Ordinance and associated regulations (Cap 123). The underlying law is simple. Anyone who wishes to carry out building works must obtain permission from the Building Authority. It is an offence to carry out such works without that permission. The principal provision is section 14(1) of the Buildings Ordinance, the relevant part of which reads:

... no person shall commence or carry out any building works... without having first obtained from the Building Authority –

- (a) his approval in writing of documents submitted to him in accordance with the regulations; and
- (b) his consent in writing for the commencement of the buildings...

The Building Authority is the government's Director of Buildings and Lands who is in charge of the Buildings Department.⁴ Building works are very widely defined. They include repairs, demolition, alterations and additions. They embrace any kind of building construction and every kind of building operation.⁵ There is very little judicial guidance as to the limits of this definition and as to what does or does not constitute building works. Unhelpfully, this is said to be a matter of fact and degree in every case. It is safe to say that the Buildings Department's view of what is building works is wider than most people's conception of them.

Grammatically, the description "building works" suggests a process rather than a result. Works start, are carried out and eventually finish. The result of the works is a building, or a changed building, a wall, a wharf, a bridge or whatever: all structures. This result cannot sensibly be described as works, yet the statutory definition says otherwise.

There are exceptions to the requirement of permission for works. Those that

⁴ Buildings Ordinance, Cap 123 (BO), s 2.

⁵ BO, s 2.

take place inside a building, which do not involve the structure of the building and which do not contravene any regulations are exempt.⁶ Minor works, such as canvas canopies and air-conditioner supports, can be erected without prior permission provided that an authorised contractor is used.⁷ There is however no exception for traditional village houses or indigenous New Territories villagers.

Building works or their consequences which take place without the required permission are known as “unauthorised building works”: UBWs in the Buildings Department’s jargon. The terminology “illegal structure”, although commonly used and convenient, is inaccurate. It is not the structure which is forbidden so much as the works that lead to its making. Also, unauthorised works do not necessarily lead to a structure: demolition of a building would require permission just as much as would erection of a building. Moreover, it is an offence to build without permission but not, without more, to keep or have the building that results. Consequently a person who buys and uses property which contains an unauthorised structure does not commit an offence. That person would, however, be guilty of an offence were the Building Authority later to order him, as owner, to remove the structure and he did not comply.⁸

Documents and permissions required

Regulations made under the Buildings Ordinance require that plans of the proposed works (other than minor works which have a separate procedure) be lodged with the Buildings Department for approval. Those plans must be drawn up by an architect, engineer or other authorised person. Standards regarding design, planning and construction with which the plans must comply are set out in regulations. The plan must be approved and consent to commencement of works be given by the Building Authority. A permit must be sought and granted before a building can be occupied. Any drainage works or street access must be separately approved.⁹

Buildings legislation has existed in Hong Kong for more than 120 years.¹⁰ The original concern was to ensure the safety of building and the health of their inhabitants in the crowded parts of the then colony. The legislation was not extended to the New Territories when they were acquired in 1898. The then

⁶ BO, s 41(3).

⁷ BO, s14AA.

⁸ S 24 BO.

⁹ BO, secs 4, 21, 28 and 30.

¹⁰ The earliest legislation dealing solely with buildings was the Buildings Ordinance 1889, No 15 of 1889. There were major re-enactments of the ordinance in 1935 and 1955.

Governor of Hong Kong, Sir Henry Blake, declared that the “good customs” of the approximately 80,000 people who lived in the acquired area would be respected. Until the middle of the twentieth century the bulk of the New Territories was predominantly countryside with relatively spacious low-rise buildings even in the market towns. In the rural parts the custom was that an indigenous male could build in his village a small house for himself or his son upon marriage, the so-called “ding uk”. Initially these houses really were small, about 350 square feet in floor area (“yat fan dei”), single storey with a cockloft under a pitched roof. What little control over these and other constructions was exercised by the District Lands Office through the terms of the Crown lease which forbade the erection of buildings except with government permission. However, the process of creeping urbanisation and suburbanisation rendered this approach inadequate so the administration determined to extend statutory controls to the New Territories.

Since 1961 the Buildings Ordinance and regulations have applied to the whole of Hong Kong.¹¹ However, it was recognised that the complex, time-consuming and expensive business of lodging plans for approval, complying with regulations and applying for permissions was undesirable and unnecessary for small village houses. So an exemption was written into the ordinance which extended the law to the New Territories. Provided that a house was within set dimensions and met certain other requirements, the controls would not apply to it. This is the New Territories Exempted House, or NTEH.

The dimensions of an NTEH are to be found in the schedule to Cap 121. They have changed from time to time. Currently and for many years exempted houses have no more than three storeys, do not exceed 27 feet (8.3 metres) in height, and have a flat roof and a roofed-over area not exceeding 700 square feet (65.03 square metres). There are also restrictions upon the size of balconies, canopies and roof-top structures and upon the thickness of walls.

Houses of this size, typically a three-storey, flat-roofed, 2100 square-foot, so-called Spanish-style villa, proliferated in the rural New Territories during the final quarter of the last century. They were built mainly on the periphery of villages on land made available by the government under the Small House Policy. This policy was instituted at the end of 1972 in order to alleviate a perceived shortage of affordable housing in the rural areas. Under the policy every indigenous adult male from one more than 600 villages on a list kept by the Director of Lands became entitled to the grant at a preferential price of one 700 square-foot plot of building land. In this way it was intended that the

¹¹ Buildings Ordinance (Application to the New Territories) Ordinance, effective 1.1.1961, originally Cap 322; replaced by Cap 121 with effect from 16.10.1987.

custom of providing a family home in the village could be maintained and local identity, clan cohesion and village environment preserved.

This intention has been frustrated by the continued migration of villagers to the city and overseas and by the sale of their rights to developers and of their completed houses to “outsiders”. This has led to tensions between new residents and old in the villages. It has also led to suburbanisation, with developers, who have acquired land from indigenous men, building clusters of expensive “small” houses on the periphery of villages.

Nevertheless, a proportion of these houses, particularly those at the centre of the villages built on land which was used for housing long before 1972, continue to be occupied by villagers. Typically the occupants are several generations of a family or are members of one extended family. A few of these houses have more than three storeys and have had more than three since the time that they were built.

Construction of this type of house is therefore not subject to the Buildings Ordinance and is outside the jurisdiction of the Building Authority. Responsibility for ensuring that the rules regarding construction of NTEHs are obeyed is solely upon the Lands Department operating through its District Land Offices (DLOs). Control is exercised through the terms of the government lease and the policies adopted by the DLOs with respect to the giving of permissions under that lease. The DLO is responsible for issuing the requisite documentation: a certificate that the building is exempt from the Buildings Ordinance, a certificate that the terms of the government lease have been complied with and a letter that there is no objection to the occupation of the house. Once the house has been finished and occupied, changes to the house fall under the jurisdiction of the Building Authority.

Construction of other types of buildings in the New Territories is subject to the Buildings Ordinance and are therefore the responsibility of the BA throughout. These include high-rise constructions and commercial centres found in the new towns and estates of modern luxury villas. Only houses within the dimensions of a NTEH fall outside building controls; and such a house ceases to be exempted if for some reason it exceeds those dimensions.¹² So if, during construction, an extra floor or half floor is added, or a ground-floor extension is built, or a balcony is widened, the house will not be exempt and will become subject to the Buildings Ordinance and regulations thereunder, enforcement of which is the responsibility of the BA. Should such adaptations occur after the house has been completed, the works require BA permission as with any other

¹² Schedule to the Buildings Ordinance (Application to the New Territories) Ordinance, Cap 121

building in the SAR.

In law therefore every piece of building construction or demolition which requires Building Authority consent and does not have it, is a breach of the law and ought to be stopped or removed. The requirement of consent is however roundly ignored throughout the SAR. The reasons for this are a matter of speculation and beyond the scope of this lecture, but one reason must be that the law is a paper tiger: the chances of “getting away with it”, at least for a considerable period, are large. The chances are, however, significantly greater in the countryside than in town.

Practice

Enforcement action against unauthorised structures is primarily carried out by the Buildings Department. Many years ago the department recognised the inevitable -- that it could not inspect every building for UBWs and that disobedience of the law was widespread. The department also recognised another reality: that the removal of every unauthorised structure is not equally pressing. Accordingly, a policy of distinguishing between UBWs for enforcement purposes was adopted. This was called “prioritised enforcement”. A statement of this policy was released to the public in the mid-1990s. That statement has been modified, but only slightly, over the years. It is published in leaflet form and on the department’s website.

According to the statement the highest priority was to be given to the removal of structures that posed an obvious or imminent danger to life or property and those that were newly completed or in the course of construction.¹³ In theory, structures for which the case for removal was less pressing would be dealt with later. In practice such structures would not be the subject of a removal order, even if discovered in the course of taking action against high-priority structures in the same building or vicinity.

In 2002 a small but significant revision of the policy took place. As a result of reconsideration by a working group of representatives from various government land divisions, it was decided that action would be taken at NTEHs against dangerous structures and work in progress only. So, in the case of village houses, recently completed unauthorized works would not be acted against. When does work cease to be in progress and become simply new? The dividing line adopted by administrators in 2006 was that work is regarded as

¹³ Other high priority targets were UBWs which had been the subject of complaint by a public bodies and UBWs in buildings or districts which were the subject of “blitz” operations for comprehensive enforcement action.

new but not in progress if it is “practically completed”, which means that the main structure is completed. This is to be judged as at the date of first detection of the structure.¹⁴

Manpower limitations of the Buildings Department have necessitated this approach. It has also necessitated that the department use enforcement weapons of lower potency than a removal order. So the department issues advisory letters to owners, suggesting that the UBW at the owner’s property ought to be removed (or “purged”). It issues letters to owners asking for removal of UBWs, these letters being registered on the Land Register if the structure is not removed so as to warn potential purchasers of the property and deter mortgage lenders. The thought was that this registration would blight the title and force the owner to remove the structure if he really wanted to sell the property. Anecdotal evidence however suggests that the registration does not prevent the property from being sold or even lead purchasers to bargain for a reduced price. At most, the purchaser’s intending mortgagee will reduce the amount of the loan that it offers to the purchaser by the estimated cost of the removal of the structure. Sometimes an owner will comply and the BD inspector will ascertain that the offending structure has gone but the owner will later re-instate the structure. The BD’s power to carry out works itself or through contractors to remove UBWs, the cost to be met by the owner, has been used in cases of persistent breach. However, shortage of funds, staff and technical expertise has limited the use of this power.¹⁵

Enforcement action has increased somewhat as a result of the Buildings Department contracting out the inspection of premises to professional consultants. These are typically firms of building surveyors and the like. Nevertheless, statutory notices and orders issued as a result of such inspections have to go out under the name of the Building Authority.

The Buildings Department therefore concentrates upon eliminating UBWs which are dangerous or in course of construction. It has enforcement teams and action units ready to intervene when unauthorised changes to a building are taking place. They issue letters advising the owner to stop the work and remove whatever has so far been built. If that is not done, a removal order will follow, requiring the works to be removed within a certain period of time. If that is not done, prosecution may follow.

¹⁴ Office of the Ombudsman, *Enforcement against Unauthorised Building Works in New Territories Exempted Houses*, April 2011, p2.

¹⁵ Buildings Ordinance, s24. Office of the Ombudsman, *Enforcement against Unauthorised Building Works in New Territories Exempted Houses*, April 2011, p5.

Whilst the occasion for enforcement action by the Buildings Department is the carrying out of unauthorised works, the occasion for enforcement action by the District Lands Office is the carrying out of works which are, or which result in, a breach of the government lease. These are not necessarily the same. However in the case of village houses the most common kinds of unauthorised structure, such as those on roofs and balconies, would lead to the dimensions of the house permitted by the government lease being exceeded so the DLO would have grounds for action for breach of the lease.

The DLOs' practice is to distinguish between blatant (i.e. obvious and major) breaches and minor breaches of the government lease. Many alterations to NTEHs constitute minor breaches. These can be tolerated on payment of a penalty. The policy adopted in 2002 of not taking action against completed new UBWs at NTEHs and concentrating upon work in progress and dangerous structures was applied to lease enforcement as well as Buildings Ordinance enforcement.

The jurisdiction of the Buildings Department does extend to building works added to village houses. The exemption from controls in Cap 121 applies only to the initial construction of such houses. Any later additions, or indeed any initial construction beyond the scheduled dimensions, would be required to comply with the buildings legislation. Nevertheless, the notion has taken root that exempted houses are completely outside building controls and are entirely the responsibility of the District Lands Office. This is partly a matter of convenience: the BD is so stretched by looking after UBWs on buildings in the urban areas that it has no desire or capacity to take on UBWs in the rural areas as well. So in practice enforcement there has been left to the various DLOs.

This pragmatic division of responsibility has contributed to the perception that there is uneven enforcement of the law; or that there is in reality one law for unauthorised structures on village houses and another for unauthorised structures on all other buildings. The perception is essentially correct, as the reports of the Office of the Ombudsman reveal. The DLOs give priority to action against the use of residential buildings for dangerous industrial undertakings. The DLOs also keep an eye open for work in progress at NTEHs but have a different interpretation from the BD as to what constitutes practical completion and thus work in progress. Consequently they have a more tolerant attitude towards illegal structures. The DLOs regard work as practically completed once the main structure has been put up. So if the frame of a building or extension is in place, they regard the work as no longer in progress even if scaffolding is still in place, even if painting or tiling has yet to

take place and even if workers are still on site.¹⁶

This is, however, more to this than a matter of interpretation. It turns out that the nine District Land Offices have different procedures for dealing with illegal structures. As with the BD, the DLOs have very limited resources. Low priority is given to lease enforcement. In 2004 the Ombudsman reported that DLOs lacked a positive attitude towards tackling the UBW problem.

One must also take into account the attitude of villagers: they are very protective of their property and of what they consider to be their rights. Accordingly they tend to adopt an aggressive, fierce demeanour towards outsiders and officials. The taking of action against unauthorised work requires proof of the work and of the breach which often involves entry to and inspection of property. Offenders are often obstructionist and confrontational. They refuse entry to officials. They stall and are uncooperative. Government staff are naturally cautious and diffident. Some of them may live in villages themselves and be sympathetic to the claims of indigenous people; they may be related to, may even be, indigenous males themselves. In many cases no action is taken, allegedly for want of evidence.

Where action is taken after inspection, a letter is sent to the house owner and may be registered. Often the letter is ignored, especially if the owner has no desire to sell the house. In cases in which the unauthorised structure is removed as a result of the letter and the removal verified by inspectors from the DLO, a replacement may be erected after the inspectors have gone. In most instances where the letter is ignored, no further action is taken. If the breach of the lease is minor, it can be tolerated, a waiver being given on payment of a penalty, for the life of the house. The ultimate sanction of re-entry (termination of the government grant by forfeiture) is used very rarely indeed. The proportion of cases in which a satisfactory result was achieved has been estimated at just five per cent.¹⁷

Proliferation of rural illegal structures

In consequence of these factors, unauthorised additions and alterations to village houses have proliferated. Attention has focused upon roof structures: covers of aluminium and glass, metal framework with canvas covers, additional rooms or half floors, even extra storeys. But new, extended and enclosed balconies are common, too, as are concrete or framed retractable canvas canopies and other projections, grilles and gates, also window and door grilles. In the case

¹⁶ The Ombudsman's 2011 report contains case studies illustrating the effect of this approach.

¹⁷ Office of the Ombudsman, *Investigation Report on Enforcement Action on UBWs in NTEHs*, 2011

of houses standing in their own grounds, extensions, out-houses and car ports are often encountered.

No systematic statistics are collected but the total number of unauthorised structures at village houses is estimated to be in the tens of thousands. A survey by the DLO in Tuen Mun in 2003 found that the number of detected UBWs there was five times that of two years earlier. A visual survey conducted by the Lands Department in 2004-5 concluded that the UBW problem at NTEHs was serious. The northern and western parts of the New Territories (Tuen Mun, Yuen Long, Kam Tin, Sheung Shui and Fanling and their environs) are particularly affected.¹⁸ On average there are about 500 complaints a year concerning UBWs on village houses. But of course not all UBWs are the subject of complaint. The Lands Department estimated that, as at February 2004, about 13,000 of the unauthorised structures resulted in a breach of lease conditions.¹⁹

The number of removal orders and prosecutions relating to UBWs on village houses is modest. There were 217 orders in 2010, 155 in 2009 and 220 in 2008. Prosecutions were 129 in 2010, 132 in 2009 and 66 in 2008. Compare those figures with the corresponding ones for urban areas where the number of removal orders is usually in excess of 20,000 per annum and the number of prosecutions is usually more than 2,000 per annum.²⁰

When DLOs were asked to estimate how long it would take to complete action against existing UBWs in their district, one DLO answered 50 years and another 97 years. The Ombudsman concluded in 2004 that the problem of illegal structures in the New Territories was widespread and that it would not be possible for the government to eliminate it in the foreseeable future: the best that could be aimed for was containment by stopping new UBWs being completed and having a realistic enforcement policy which was widely known.²¹ In 2011 the Ombudsman recommended that the practice of tolerating new UBWs should be changed so as to bring enforcement practices into line with those in the rest of the SAR. He also suggested that the BD and the DLOs should bring their practices into line, streamline their procedures and consider better methods of obtaining evidence. This will of course mean more work for officials. So will the government's reaction to the Ombudsman's

¹⁸ Carrie Lam, Secretary for Development in answer to an oral question from Legco member Lee Wing-Tat, 18.5.11.

¹⁹ Ombudsman's Report, 2011

²⁰ Reply of the Secretary of Security to a written question raised in Legco by Hon Wong Yuk-man, 15.6.11.

²¹ Office of the Ombudsman, *Report on Enforcement Action on UBWs in NTEHs*, 2004.

criticisms, which has been to re-iterate the law and vow to uphold it.

Lessons

What lessons can we learn from the above? There seem to me to be a number but they can be grouped under three general propositions. The first is that the law is generally misunderstood and is confused with its application and enforcement.

The law itself casts a wide net. It requires prior permission for nearly all building work. The definition of building work is very broad, taking in items which sensible people would not regard as building work and requiring permission for doing things which ordinary people regard as part of the rights inherent in ownership. In consequence the law is unrealistic and has been brought into disrepute. The requirement of permission, if understood, is roundly ignored. Full enforcement of the law is impossible. The administration has tacitly recognised this with its policy of prioritised enforcement.

The policy of prioritisation has given a false impression of the law. It is widely believed, even among professionals such as architects and estate agents, that certain types of work do not require permission or at least are tolerated and therefore within the law. The severity of the Buildings Ordinance is therefore generally not appreciated: perhaps this is as well, for there might otherwise have been civil discontent.

The second lesson is that there is not one law of building works for village houses and another for all other property, nor is there a different law for the New Territories from that in the rest of Hong Kong. The Buildings Ordinance applies to all buildings throughout the territory. The only qualification to that concerns the initial construction of village houses. These are subject to separate controls. However, once completed, the Buildings Ordinance applies to them, too.

The idea that there are no controls for village houses stems from a confluence of factors. One is that initial construction of village houses is exempted from statutory controls. Another is that indigenous villagers enjoy privileges and that those privileges relate mainly to housing. Their lawful traditional rights are enshrined in the Basic Law and jealously guarded by the Heung Yee Kuk. The courts are obliged to apply customary law in the rural New Territories. The major surviving custom is that male villagers may build a house in their ancestral village. For almost forty years the government has facilitated this by

creating and maintaining the Small House Policy under which building land near villages is made available to indigenous males at low cost. This privilege has been roundly abused with non-resident, and even non-native, male descendants of indigenous males claiming (often through developers) the right to building land for a house which they promptly re-sell. The government has done little to stop this abuse.

The impression therefore given is that the building of extensions and additions to NTEHs is part of the privileges of villagers. Indeed some villagers and their representatives claim just that. They say that custom permits small houses to be enlarged if indigenous people require the living space. They assert that before the Small House Policy was instituted, or at least before the British took over the NT in 1898, there was no limit to the size of such houses. That is why on some old house lots in the centre of certain villages you find houses with more than three storeys. The Kuk seems intent upon testing this assertion in court and enlisting the support of mainland authorities.

However the biggest contribution to the false impression is administrative practice. The Buildings Department and the District Lands Office are over-stretched so they have adopted a practice of not acting against new UBWs in rural areas. They concentrate instead upon dangerous structures and work in progress. This difference in approach to enforcement between urban and rural parts has been exacerbated by the adoption of a very narrow interpretation by DLOs of what constitutes work in progress.

Add to this the reluctance of government officers to incur the wrath of villagers and the result is that there is a markedly lower degree of enforcement of the law in the New Territories. This is not confined to village houses. Other types of residence in the New Territories enjoy the same tolerant treatment.

The final lesson is deeper: the law is badly in need of reform. This is not addressed by the Ombudsman's reports – unsurprisingly, since they are concerned with administrative practice in the enforcement of the existing law. However, the reports unwittingly bring out the weaknesses, indeed the absurdity, of the current law. By forbidding land owners from altering their properties in any substantial way without first going through a debilitating bureaucratic process with no certainty of receiving permission, the government is setting itself against the normal expectations of owners. Householders naturally resent being obliged to pay tens of thousands of dollars to an architect or other person authorized to submit plans to the Building Authority and then wait for permission which will take months if not years. A law which may have been appropriate when Hong Kong had a much smaller population, many fewer buildings and far fewer property owners, when building standards, practices and

materials were not of high quality, is not appropriate now. A law which does not provide for retrospective consent to be given, so that an owner is obliged to remove perfectly safe unauthorized structures before applying to re-build them, is seriously flawed. When the administration itself does not expect its legislation to be obeyed, as is apparent from the prioritization policy and the starving of the Buildings Department and the District Land Offices of resources to enforce the legislation, how can the public be expected to respect the law? When the high and mighty do not obey the law, why should ordinary people do so?

The Legislative Council is investigating the issue. The Heung Yee Kuk is upset about the government's attitude. The Secretary for Development has said that she will be asking for additional funding in the next budget so that enforcement can be stepped up. One concludes that the controversy about illegal structures is far from finished.